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CHIEF JUSTICE - A
BIOGRAPHY OF EARL
WARREN

CHAPTER 33

FACTS SO SIMPLE

MARGARET BRYAN HEARD IT FIRST, FROM A COWORKER IN THE Supreme Court cafeteria who had a reputation as "a terrible kidder," she recalled later. "I thought it was in bad taste."

And then she realized the story was true, so terribly, terribly true.

Bryan made her way upstairs to the chief justice's offices and told Margaret McHugh. Steeling herself, Mrs. McHugh typed a brief note to the Chief: "It was reported the President has been shot while riding in a motorcade in Dallas, Texas."

Alvin Wright, the robing room attendant who guarded the great oak doors of the conference room, knocked softly. He handed the folded note to Arthur Goldberg, who as junior justice answered the door.

Warren read the note, suddenly numb, then tearfully adjourned the conference. The justices scattered to their chambers, some to drift with their law clerks to Bill Brennan's office with its fair-sized television set.

They stared at the television, subdued, waiting. "It was a bizarre, and ultimately sad scene," Warren law clerk Frank Beytagh recalled. "There were people there who knew Jack Kennedy quite well, like Byron White and Arthur Goldberg."

Warren retreated to listen alone to the radio bulletins. Texas governor John Connolly had also been gravely wounded. Both he and the president were at Parkland Hospital, Dallas's finest emergency facility. A half-hour later came the news flash: The president had died in the emergency room of Parkland Hospital shortly after 1:00 P.M.

Shocked, wanting to deny the truth, the chief justice wandered from his office. With tears in his eyes, he talked quietly to his small staff in the reception area.

He spoke of the young president whom he had seen just two days before at a White House dinner honoring the Supreme Court. The members of the Court were teasing the president about his upcoming political trip. "We were joshing and laughing. We told him to watch out for those Texans; they were a wild bunch. All in fun, you know."

And now that vibrant young man was gone, his great promise obliterated by a sniper's bullet. "The days and nights following were more like a nightmare than anything I had ever lived through," the chief justice wrote later.

Warren grieved. He had looked upon Jack Kennedy as more than the president. "It was like losing one of my own sons," he acknowledged later. "You know, he was just a little older than my oldest boy."

The chief justice was somber throughout the afternoon, Mrs. McHugh recalled. "He was very, very upset." The prompt arrest of a suspect by Dallas police offered no consolation.

Washington was a stricken city that afternoon. One by one, people drifted away from their offices, often to drive about aimlessly. Warren's chauffeur, in suburban Maryland with Nina, called to report he was stuck helplessly in traffic.

Warren turned to law clerk Frank Beytagh and requested he stay. Later that afternoon, the Chief asked Beytagh to drive him to Andrews Air Force Base. The president's plane was to land there. Warren felt it was his duty to be on hand, to demonstrate that the government, the nation lived still.

When Air Force One landed, the sight of Jacqueline Kennedy still wearing the pink suit stained with her husband's blood unsettled Warren once more. On Wednesday night, she had been his dinner partner, exchanging pleasantries, a glittering hostess in formal gown. Less than forty-eight hours later, they watched helplessly as her husband's casket was loaded into a hearse.

Saturday evening around nine o'clock, Jacqueline Kennedy telephoned the Warren apartment. Gathering her composure as she made funeral arrangements, Mrs. Kennedy asked if Warren would deliver one of the eulogies during memorial services in the Capitol the next day.

Warren agreed, then struggled futilely that night to write something meaningful. Distraught, he put off the task until Sunday morning.

He was writing the eulogy when a television reporter broke in on the regular programming to report that the suspected assassin, Lee Harvey Oswald, had himself been shot dead in the basement of police headquarters in Dallas. The madness reeled beyond comprehension.

Warren's eulogy, delivered before the coffin resting on the Lincoln catafalque in the Capitol rotunda, was laced with the shock felt across the nation. John Fitzgerald Kennedy, "a great and good President," was dead, "snatched from our midst by the bullet of an assassin."

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What moved some misguided wretch to do this horrible deed may never be known to us, but we do know that such acts are commonly stimulated by forces of hatred and malevolence, such as today are eating their way into the bloodstream of American life.

What a price we pay for this fanaticism.

Without saying so specifically, Warren personally blamed the radical right and Texas's extremely conservative oil millionaires. He had known their allies in California, the William Kecks and Tom Werdels, bitter men who preached a form of politics based on fear and hatred.

Warren could only close his eulogy to a fallen leader with a plea to

abjure the hatred that consumes people, the false accusations that divide us, and the bitterness that begets violence.

Is it too much to hope that the martyrdom of our beloved President might even soften the hearts of those who would themselves recoil from assassination, but who do not shrink from spreading the venom which kindles thoughts of it in others?

The implicit accusation in the eulogy was a measure of his grief and the haste with which he finally wrote. While others also leaped to similar conclusions in those first days after the assassination, it was unlike Warren to point a finger of guilt.

Long after, said his son Earl, Warren would alternate between sadness and anger. "He told me, at the height of his anger, 'I don't know who or what caused this or did the deed, but I sure know where the blame is.'"

The day after, a heavyhearted Earl Warren walked behind the caisson that carried the body of the dead president, first to the funeral service, then to the burial at Arlington National Cemetery. He returned to the Court on Tuesday a different man, Mrs. McHugh remembered. "He just wasn't like himself."

On a gray, rainy Friday, November 29, after the justices' weekly conference, Warren received a telephone call from Solicitor General Archibald Cox and Acting Attorney General Nicholas Katzenbach. They requested an immediate appointment.

Behind closed doors, Cox and Katzenbach explained that they had been sent by President Lyndon Johnson. "They told me that because of the rumors and worldwide excitement about the assassination, the President wanted to appoint a commission to investigate and report on the entire matter. The President wanted me to serve as chairman of the commission."

In the conversation, either Cox or Katzenbach indicated that the Kennedy family had specifically approved his nomination.

The newly sworn-in president had been mulling just such a commission since the previous Sunday. Katzenbach, a Kennedy appointee, had suggested

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to two of Johnson's closest advisers that there were already doubts in the press about the successive deaths of the president and his suspected assassin.*

In the days that followed, the United States Information Agency had culled widespread reports from overseas expressing doubt about Oswald's guilt, and hinting at a larger conspiracy. The communist press, meanwhile, was "making a determined effort to attribute the assassination of President Kennedy to a rightist conspiracy, and the killing of Lee Oswald by Jack Ruby has given them new ammunition."

Domestically, Johnson confronted a differing interpretation, an aide explained. It was "far more incredible for the American people to believe that one nut killed the president of the United States than if this was some plot masterminded in the Kremlin."

On Friday morning, Johnson made up his mind. He dispatched Cox and Katzenbach, men close to the Kennedys and known to the chief justice.

The envoys returned empty-handed. Warren told the two that the brethren had often discussed extra-Court activities by justices in the past, and had condemned them as being either political or perilously close.

Most recently, in December, 1941, Associate Justice Owen Roberts had agreed to investigate the Pearl Harbor attack. Roberts's report to President Franklin Roosevelt resulted only in further investigations and led the justice himself to decide his service had been a mistake.

After the war, Robert Jackson had accepted assignment as a prosecutor at the Nuremberg war crimes trial. That too had ended in a swirl of public controversy about a justice's involvement in extrajudicial activity, and bitterness among the brethren.

In earlier discussions of a proposed constitutional amendment on presidential disability, Warren had publicly stated he did not believe the chief justice should be one of those to determine if a sitting president was incapacitated and unable to fulfill his duties.

Explaining all this to Katzenbach and Cox, Warren declined. "And I thought that settled it."

Lyndon Johnson was not so easily put off. About ninety minutes later, the president himself was on the telephone. He asked the chief justice to come to the White House.

The two men met privately at 4:30 that afternoon for approximately twenty minutes in the Oval Office. The president personally asked Warren to serve as chairman. "I told him that I had to have someone of his stature to head this commission," Johnson explained.

* Others apparently had the same idea, among them Walt W. Rostow, then dean of the Yale Law School, and House whip Hale Boggs, who would serve on the commission. Katzenbach seems to have been the first, with a telephone call to Johnson friend Homer Thornberry, who relayed the message to White House adviser Walter Jenkins. Jenkins's resulting memorandum to the president of November 24, 1963, is in "Original Warren Commission Material" folder in the LBJ Library.

The problem was far larger than Warren imagined, Johnson confided. The FBI had turned up a Cuban who claimed to have offered Oswald \$6,500 on behalf of Cuban Premier Fidel Castro to kill John Kennedy.

As Warren recounted the conversation, "The President told me that he felt that the assassination was such a torrid event that it could lead us into a war, and that if it did it would be with another world power." As many as 60 million would die in a nuclear war. "We don't know what this thing will bring forth."

Warren remained adamant. The brethren agreed it was wrong for them to take presidential assignments. It blurred the lines between their separate branches. Furthermore, they had enough work to do as it was, without taking on more.

But Lyndon Johnson was not to be denied. Cunning and manipulative both, he resorted to the guilt-laden pressure tactic he called "jawboning," turning on Warren all the persuasive power and authority of his office.

"You're a man who occupies one of the most important positions in this country and this country has been good to you. And it's recognized you, and I know it hasn't made any mistake. I know that the merit that the country feels you have is justified."

Once launched, Johnson soared. "I remember somewhere seeing a picture of you in an Army uniform when this country was under—involved in war, where you went out and offered your life to save your country.

"And now your services are more necessary at this moment than they were then to save this country."

Johnson jawboning was an irresistible force. He had lined up the six other members of the committee, he said: Senators Richard Russell and John Sherman Cooper; Congressmen Hale Boggs and Gerald Ford; banker and frequent presidential counselor John McCloy; and former Central Intelligence Agency director Allen Dulles. All had agreed to serve on condition that Warren chair the commission, the president fibbed.

"And I'm not going to take no for an answer. And you're not going to tell me that if the president of the United States says to you that you must do this for your country so that we can resolve once and for all without any peradventure of a doubt what happened here, that you're going to say no, are you?"

Under the pummeling, Warren gave way. As the president retold the story—and embellished freely—tears came to Warren's eyes.

"Well, Mr. President, if, in your opinion, it is that bad, surely my personal views don't, shouldn't count. If you wish me to do it, I will do it."

A worried chief justice returned to the Supreme Court that evening, law clerk Frank Beytagh remembered. "It took a lot to shake him, but he was pretty shaken that evening."

As Beytagh recalled the Chief's explanation, he confessed, "I just don't want to do this thing."

Johnson's flattery was a person who could not be trusted, probably not true.

Instead, the Chief Justice's consent. "I don't know if it's right to tell the public."

The president remained on the sidelines, simultaneously overseeing the operations of the executive branch and the various government agencies.

Johnson wanted the FBI report to be more definitive than the first, but the report was not involved in any way.

That concern over registered Republican rumors of political maneuvering.

Each of the candidates, Johnson expected to be elected on November 29 while Lincoln was still in office.

Warren as chief justice. Even Georgia Governor James Earl Russell, who had been elected, "I don't know if there's a greater man in the country."

Russell had said that man, he attributed them to a member of the committee.

The Democratic Party—weakens with anybody's support. I want a man who can lead the country reluctantly.

John Sherman and the Court. Once ambassador to the Soviet Union, his implications, and his overseas work were a policy.

From the House of Representatives. Gerald Ford. He was a smart politician and a good leader.

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Johnson's flattery had not seduced Warren. "I was told I am the only person who could do this, and I've lived long enough to know that's probably not true."

Instead, the Chief's own sense of patriotic responsibility had led him to consent. "I don't think it's the right thing to do, but I don't feel I had the right to tell the President, 'No.' "

The president, in turn, had given his own commitments. Warren would remain on the Supreme Court and would handle both Court and commission simultaneously. He would have full cooperation from other government agencies and whatever funding he needed to produce a report.

Johnson wanted a quick investigation by the commission, one based on the FBI report that Director J. Edgar Hoover had promised to complete no later than the first of the week. Not only were there international implications, but the new president wanted to scotch any rumors that he was involved in any fashion.

That concern helped to shape the commission. Five of its members were registered Republicans, only two were Democrats. That would negate any rumors of political influence on the report.

Each of the commissioners was there for a purpose, sometimes more than one, Johnson explained in the series of telephone calls he made on November 29 while lining up the panel.

Warren as chief justice lent the prestige of his office to the commission. Even Georgia senator Richard Russell, who disliked Warren, acknowledged, "I don't have much confidence in him though I realize he's a much greater man in the United States than almost anyone."

Russell had stubbornly refused to serve with Warren. "I just don't like that man," he insisted. (Warren was aware of Russell's harsh feelings, and attributed them to the Court's racial decisions, he told a commission staff member.)

The Democratic senator—once Lyndon Johnson's mentor in the Senate—was weakened when the president appealed to his patriotism. "You can serve with anybody for the good of America," Johnson insisted. "Now, by God, I want a man on that Commission and I've got one." Russell consented reluctantly.

John Sherman Cooper, the liberal Republican who had defended Warren and the Court from William Jenner's attacks in 1957, readily signed on. Once ambassador to India, Cooper would be sensitive to foreign policy implications, an important consideration when ambassadors at 125 stations overseas were clamoring to know if a new president meant a new foreign policy.

From the House of Representatives, Johnson selected Hale Boggs and Gerald Ford. Boggs was the first in Congress to propose an investigation; smart politics suggested his foresight be acknowledged. Gerald Ford, eyeing the leadership of the GOP in the lower house, was on good terms with

J. Edgar Hoover. Ford could be counted on to keep the FBI's shoulder to the wheel while protecting the bureau's interests.

The "civilians," both recommended by the slain president's brother, were Allen Dulles and John McCloy. Dulles, for eight years director of the Central Intelligence Agency under Eisenhower, would ostensibly assure CIA cooperation. Former U.S. High Commissioner of Germany John McCloy was the least entangled, a representative only of the GOP-leaning Establishment that had guided presidents since the Civil War.

Still wary of plots or "copycat" assassins, Lyndon Johnson ordered the Secret Service to protect various government officials, including the chief justice. Nina and Earl Warren dismissed it all as unnecessary, particularly the armed agents with walkie-talkies who tramped the grounds of the Sheraton Park at night. Somewhere between annoyed and amused by the security force, the Chief and his law clerks took to ducking into restaurants, abruptly leaving by the back door, and shaking the ubiquitous guards.

Warren's first task was to build a staff. His immediate choice as the staff director, almost as a reflex, was Warren Olney.

Olney, however, had enemies. As assistant attorney general in charge of the criminal division, he had come to hold a less than enthusiastic opinion of J. Edgar Hoover. Olney was "the only guy who had balls enough to stand up to Hoover," one FBI agent reportedly congratulated him.

Furthermore, Olney had helped push through Congress the Civil Rights Act of 1957; however mild it was, it angered southern Democrats, Richard Russell among them.

Russell and Hoover, through Gerald Ford, lobbied against Olney's appointment. Ford, in turn, complained that Warren was "attempting to establish a 'one-man commission' by appointing a chief counsel, Warren Olney, that [sic] was his own protégé."

Fighting for Olney's appointment might sunder the commission even before it met. And John McCloy had another man in mind.

Warren had known J. Lee Rankin as a former assistant attorney general in the Eisenhower administration, then as solicitor general from 1956 to 1961. Warren particularly respected Rankin's principled stand against the cronyism and influence-peddling in the Dixon-Yates case.

Now practicing law in New York City, Rankin agreed to take on the pivotal responsibility of the commission's general counsel. Rankin proposed the organization of the investigative team, and the assignment of a senior and junior counsel to each of five research areas: the basic facts of the assassination; the identity of the assassin; Oswald's background; possible conspiracies; and Oswald's death. (A sixth, on presidential protection, would be added shortly after.) Relying on the FBI investigation, they would be able to finish their work in three or four months, Rankin estimated.

Based on recommendations from friends and associates, Rankin selected the staff. Of the eleven practicing attorneys he chose, just two had ties to the chief justice: Joseph Ball, senior counsel charged with determining the

identity of the assassin; and his services should be the responsibility for the trial.

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identity of the assassin; and former law clerk Samuel Stern, who volunteered his services shortly after the commission was named. Stern was given responsibility for the subject of presidential protection.*

A prominent trial lawyer in California, Joe Ball had known Warren the governor slightly, largely through common membership in the American College of Trial Lawyers. Their relationship deepened during Warren's first years on the Court. Ball's outspoken defense of "liberal" Warren Court decisions led to social meetings when the chief justice visited California. In 1960, the chief justice asked Ball to serve on a committee revising the federal rules of criminal procedure. Over time, they drew close, sharing dinner and a ball game when Ball was in Washington. Ball would also handle daughter Dorothy Warren's divorce.

For the ten months of the Kennedy Commission's life, Ball was to play a pivotal role on the staff. "He was my father's right arm on that commission. Nothing would have come of that commission without Joe Ball," Earl Junior stressed.

Ball's responsibilities broadened when the senior counsel charged with investigating the basic facts of the assassination failed to appear regularly. Ball and his junior counsel, David Belin, joined forces with the orphaned Arlen Specter.

Warren as chairman of the commission met with the assembled staff for the first time early in January. His charge to them was straightforward: "Truth is our only goal."

Because they would handle classified documents, each of the men appointed had to be cleared by the FBI. A bureau report that one of Rankin's assistants, Norman Redlich, had once signed an ad opposing the House Committee on Un-American Activities prompted Ford to demand that Redlich be fired.†

Warren dismissed the accusations as "nonsense," Ball said. "What do you think those files show on me," Warren joked privately.

When Ford persisted, Warren countered, "Then we will have a public trial and give Redlich the same opportunity as anyone else to be heard in his own defense." Ford's motion to hold a hearing died for lack of a second.

The commission waived the necessary clearances for Redlich and Ball, who similarly opposed the committee, Ball said later.

From January to October, 1964, Warren held two full-time jobs. He arrived at the commission's second-floor offices in the new Veterans of Foreign Wars building diagonally across the street from the Supreme Court

* The senior counsel received \$100 per day, junior \$75. Both received a \$25-per-day expense allowance. Over the next ten months, staff salaries would amount to \$239,000 and the commission's total cost \$1.2 million. (Of that sum, \$608,000 paid for printing the final report and its twenty-six volumes of supplementary material.)

† Californian Joseph Ball privately told the chief justice that he had campaigned up and down the state against the loyalty oath, and in public lectures had often spoken out against the Un-American Activities Committee. Apparently the FBI had no record of Ball's activities.

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at 8:00 A.M. Shortly before the 10:00 A.M. opening of the court, he left to hear the day's arguments, then returned around 3:00 P.M. to work once more on the assassination investigation.

At the commission offices, the chief justice spent much of the time closeted with Rankin or with Joe Ball. Together they reviewed the staff work, Warren approving it or suggesting follow-up investigations.

The chief justice devoted himself to the commission. Despite his responsibilities on the Court, despite a bronchial infection through the winter that Sam Stern described as "a major strain on his health," Warren missed only one commission hearing, and part of a second.

It was grueling, and doubly a burden for Warren, Stern noted. "The assassination was a terrible loss to him personally. He was terribly solicitous to Mrs. Kennedy and the family. It was a constant emotional drain on him."

Warren aside, the commissioners did not play major roles in the investigation. When commissioners made suggestions, Rankin implemented them, but the staff went where instincts and judgment led. Rarely did Warren balk.

Initially, the commission had intended to rely on the FBI's report, a narrative of the assassination reconstructed from hundreds of interviews. But Warren found the report a summary, "in more or less skeleton form," of the evidence against Lee Harvey Oswald.

At Warren's urging, the commission adopted a resolution on December 16 asking all government agencies to produce the raw material on which the summary report was based. Concerned with what the commission might find—the FBI had its own secrets to protect—J. Edgar Hoover alternately fumed and fretted.

Within the first week, staff counsel had turned up problems with the supporting field investigations, and thereby justified Hoover's fears.

First, a page was discovered to be missing from Oswald's notebook. "We checked back and, sure enough, it was ripped out by FBI Special Agent James Hosty because it had Hosty's name and phone number," commission counsel W. David Slawson stated.

"Hosty was afraid of his future career in the FBI if it came out that he had such close contact with Oswald and he [Hosty] had not warned the FBI that Oswald was such a dangerous person."

The approximately 25,400 pages of FBI reports proved frustrating to the commission staff. Frequently, questions that should have been asked were not "because the agents didn't have any flexibility," Slawson decided. David Belin, working with Joe Ball on the identity of the assassin, found "a lot of inaccuracies, a lot of inconsistencies" in the 2,300 FBI documents.

By the end of January, Ball said, he and Belin had concluded the "FBI reports were insufficient to our minds. They were contradictory, and things that should have been explained in them weren't."

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Faced with that, Ball recommended first to Warren and then the commission that they investigate anew the identity of the assassin. "All we got back was, 'Go ahead.' "

Ball, Belin, and Specter were independently to reinvestigate the case against Oswald. They considered the FBI reports no more than a preliminary inquiry, an aid to their own autonomous work.

Once he realized his bureau's report would not go unquestioned, J. Edgar Hoover fell into sullen uncooperation. He refused to permit informal access to FBI agents and laboratory technicians. If staff members wanted to speak with them, Hoover insisted, call them before the commission. They were called.

Far more important, Hoover withheld from the commission an internal FBI document of December 10, 1963, summarizing the censure of seventeen agents in the wake of the assassination. The seventeen, field agents and supervisors in Dallas, New York, New Orleans, and Washington, had failed to put Oswald on a security watch list. Thus the Secret Service was not informed of Oswald's presence in Dallas on the day of the Kennedy motorcade.*

Other members of the commission staff confronted problems as well. The Central Intelligence Agency was tight-lipped, never to reveal that it had launched repeated efforts to assassinate Fidel Castro. As long as the commission did not ask—and the CIA's involvement in such intrigues was not yet public knowledge—CIA representatives did not tell.

The commission itself was embarrassed by a series of leaks. The Dallas Police Department was a sieve; ranking officers often talked on a not-for-attribution basis with favored local reporters. At least one member sold a portion of Oswald's "diary" for publication. *AS is a leak at Alexander gave it to reporter in back of agreement*

Hoover slipped copies of the FBI's initial narrative report to friendly journalists—and then hinted that Warren was responsible for the leak. Finally, in late spring, *Life* magazine published an illustrated "inside account" of the assassination by Congressman Ford. The unauthorized story—for which Ford reputedly received \$1 million—"was a real breach of confidentiality clearly done for personal profit and political motive," one staff member complained. *most hearings had no members present.*

Despite these distractions, Warren pressed the investigation. Attendance at commission hearings by the commissioners was spotty. Warren, as presiding officer, and McCloy were there for every session. Dulles came almost as often, though at age seventy he grumbled that he had only two good hours a day. Senator Cooper and Congressmen Boggs and Ford were constantly

* A text of the document is in *Investigation of the Assassination of President John F. Kennedy, Hearings Before the Select Committee on Assassinations of the U.S. House of Representatives, 95th Congress, 2nd Session, September 18–21, 1978, vol. III, pp. 531–33.* Hoover apparently sought to compel Special Agent James P. Hosty, Jr., to resign. (Hosty was monitoring Oswald's pro-Castro activities.) Hosty doggedly stayed on to retire at age fifty-five in 1979.

leaving hearings to answer quorum calls on the Hill. Russell simply did not attend but at Warren's invitation sent a monitor.

Early on, Warren decided "a surface case was established" against Oswald. Ex-marine Oswald had worked at the book depository. He had disappeared immediately after the shooting, the only depository employee to do so. An Italian rifle had been found, with spent cartridges, on the sixth floor where Oswald worked.

"These circumstances, followed by his trip from the building, getting on a bus and getting a transfer, then getting a cab, killing [Dallas policeman J. D.] Tippit, and running into a theater where he tried to shoot the policemen who came to get him, these made a case."

Within days, law enforcement officers would tie the Mannlicher-Carcano rifle to a mail-order house, and from there to Oswald through handwriting analysis. FBI ballistic tests linked the rifle and spent cartridges to the bullets and lead fragments found in the president's body and on Governor John Connally's stretcher. With that, onetime prosecutor Earl Warren had his case.

"The facts of the assassination itself are simple, so simple that many people believe it must be more complicated and conspiratorial to be true," Warren wrote in his posthumously published *Memoirs*.

Warren personally had no doubts. "If I were still a district attorney and the Oswald case came into my jurisdiction, given the same amount of evidence I could have gotten a conviction in two days and never heard about the case again."

In the face of immediate polls indicating that more than half of all Americans believed a conspiracy was afoot, Warren stood firm. "One person and the truth is a majority," Warren repeatedly told the staff.

Warren never doubted that Lee Harvey Oswald, the disaffected outsider, was the lone assassin. While others argued that a second rifleman was posted in Dealey Plaza, the chief justice said firmly, "No one could have fired from the knoll or the overpass without having been seen."

He put no faith "in a conspiracy of any kind," Warren told the commission's historian. "The only thing that gave me any pause about a conspiracy theory was that Oswald had been a defector to Russia at one time."*

Still, a conspiracy was possible, he conceded. But Warren the former prosecutor relied on hard evidence, not supposition in building a case.

"I don't doubt there were hundreds of people in the South who talked about killing President Kennedy," he told newspaper columnist Drew Pearson in the summer of 1967.

* In 1979, a select committee of the House of Representatives criticized the Kennedy Commission for not adequately investigating the possibility of a conspiracy, then added, "In large measure, the Warren Commission's inadequacies in investigating important aspects of the President's assassination was [sic] a result of failures by the C.I.A. and F.B.I. to provide it with all relevant evidence and information." See *The New York Times*, November 29, 1985.

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"But the question is—were they in on the assassination in Dallas? We know what Oswald did, and I am satisfied that there is no evidence that anyone else did."

If not domestic, the conspiracy might have had its roots in foreign intrigue. "I am quite prepared to believe that Castro wanted to kill Kennedy, and may have sent some teams here to do it. But there is no evidence that he did," Warren added.

For the next ten months, Warren took a direct hand in the inquiry out of exasperation with the pace of the investigation, according to Earl Junior. A self-imposed deadline of July 1 was fast approaching; only Ball, Belin, and Specter had their draft reports completed.

So as not to miss a single session of the Court in the crowded closing days of the term, Warren compressed what Rankin estimated would be a week's work in Dallas into a single crowded day.

In the quiet of Sunday morning, June 7, 1964, Warren walked Dealey Plaza, talked to police officers and witnesses who had been in the School Book Depository Building, then retraced Oswald's movements from his boardinghouse to the sixth-floor sniper's nest. From there, he peered down through the trees to Elm Street below. He squinted through the four-power telescope on the same 6.5-millimeter Mannlicher-Carcano rifle Oswald had used while staff lawyer Arlen Specter detailed his theory of the shooting.

As Specter had reconstructed the shooting, Oswald's first shot struck the president in the back of the neck, hitting no bone, sliced the trachea, and exited the front, nicking the tie he was wearing.

Hardly slowed, the bullet struck Governor Connally, sitting on a jump seat in front of Kennedy, just to the left of the right armpit, sliced a rib, tumbled out leaving a four-inch hole in Connally's chest below the right nipple, and continued on to pass through his wrist and lodge superficially in his left thigh.

Though scorned as far-fetched by later critics, this "single bullet" theory was supported by laboratory tests.

The second was the fatal shot, striking the president in the back of the skull, spraying a mist of blood, bone fragments, and brain tissue over the limousine's interior.

A third shot seemingly missed the automobile entirely, struck a curb, and sent a concrete chip off to nick a spectator's cheek. From first to last shot, slightly less than eight seconds had elapsed.*

* The commission was unable to determine conclusively which of the three shots missed. In point of fact, it made no difference in the findings. Warren personally was inclined to believe the first bullet struck Kennedy and Connally, and the second was the fatal shot. Connally maintained he heard the first shot, turned, and was wounded by the second, leaving the third shot the fatal one. However, in a statement released in Austin, Texas, on November 23, 1966, Connally stressed, "... [S]imply because I disagree with the Warren Commission on this one detail does NOT mean that I disagree with the substance of their overall findings."

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When Specter finished, Warren silently turned from the window. The distance from the rifle's muzzle to the president's limousine ranged from 175 to approximately 270 feet. Divided by four, the power of the telescopic gunsight, the range was effectively less than 70 feet; it was a simple shot for a practiced Marine Corps marksman—as hunter Warren realized.

That completed, Warren, Ford, Rankin, and Specter interviewed Jack Ruby, convicted of Oswald's murder, in the basement of the Dallas city jail. Ruby had consented to talk to Warren, on condition he be given a lie detector examination. The test, he believed, would prove he was not involved in a conspiracy.*

Warren only reluctantly agreed to the polygraph test. He had no faith in unreliable gadgetry he dismissed as "Big Brother paraphernalia."

The jailhouse meeting with Ruby was disjointed, Ruby at one point demanding that someone Jewish be in the room with him. According to Earl Junior his father "felt that he and Ruby got along well together, that Ruby talked to him honestly, as best he could under his mental condition. But he felt that Ruby's mental condition was very fragile . . ."

Warren came away convinced that Ruby had not known Oswald before shooting him, that Ruby had acted alone, and that his decision to kill Oswald was made on the spur of the moment.

"But the fellow was clearly delusional when I talked to him," the chief justice commented. "He took me aside and he said, 'Hear those voices? Hear those voices?' He thought they were Jewish children and Jewish women who were being put to death in the building there."†

That afternoon, the men from Washington retraced Oswald's attempted escape route from the book depository to the Texas Theater on West Jefferson Boulevard where he was captured. By nightfall, they were on their way home, Warren still reading witnesses' depositions.

In Washington, Warren also took the lead in questioning both widows, Jacqueline Kennedy and Marina Oswald. They would receive considerate attention from the courtly, solicitous Earl Warren.

The chief justice and Rankin took Mrs. Kennedy's statement privately on Thursday, June 4, at her Georgetown home. Seeking to protect her from any renewed horror, Warren convinced his fellow commissioners to accept her statement without further questioning.

Compassionate he was, but not fawning. When "little Mrs. Kennedy"

* The lie detector test was suggested to Ruby's rabbi, Hille Silverman, by David Belin. Belin was sidestepping a commission decision not to employ inconclusive polygraph examinations. "I just circumvented the Warren Commission and [became] a committee of one to do it. I didn't tell Joe Ball. I didn't tell anyone. I just did it," Belin explained in an interview on June 11, 1992. Examined on July 18, 1964, Ruby persuaded the polygraph operator that he was telling the truth when Ruby denied knowing Oswald or having any involvement in a conspiracy.

† Treated by Dallas jailers with Pepto-Bismol for an upset stomach, Jack Ruby died of metastasized cancer at Parkland Hospital on January 3, 1967.

later asked Warren suspected she was suppressing or distorting the truth.

Members of the Warren Commission before the entire chief justice accepted the secret the X-ray at Naval Hospital.

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later asked Warren for the president's bloody clothing, he declined. He suspected she wanted to destroy it, and "we couldn't be in the position of suppressing or destroying any evidence."

Members of the staff were unhappy that Mrs. Kennedy did not testify before the entire commission. Many were even more unhappy when the chief justice acceded to Attorney General Robert Kennedy's wishes to keep secret the X rays and photographs of the autopsy conducted at Bethesda Naval Hospital.

David Belin contemplated resigning in protest. If Officer Tippet's widow could not withhold evidence from the commission, why could the Kennedy family?

Warren explained that he feared souvenir hunters would turn the assassination into a ghoulish yard sale. Scavengers had offered \$10,000 for the Mannlicher-Carcano, and had asked to buy Oswald's clothes and the pistol with which he killed Dallas patrolman J. D. Tippit. Others had inquired about the president's bloody shirt.

The chief justice alone reviewed the autopsy photographs taken at Bethesda, color enlargements "so horrible that I could not sleep well for nights." He did not want these exhibited in some touring Grand Guignol devoted to the assassination.*

He took responsibility for the decision—affirmed by the commission—not to make these part of the public record. Instead, the commission would rely on the testimony and sketches of the pathologists who performed the autopsy. "The public was given the best evidence available—the personal testimony of the doctors who performed the autopsy," Warren insisted.

The fifty-two autopsy photographs, the fourteen X rays, and the president's bloodstained clothes were turned over to the Department of Justice for permanent archiving; they would not be shown to anyone without the consent of the Kennedy family. "I am certain it was the proper thing to do," Warren wrote in his *Memoirs*. That would be his final word.

Marina Oswald also received special consideration from the Chief. The staff attorneys who had investigated Oswald's life and his disillusioning stay in the Soviet Union wanted to question her closely about inconsistencies in her statements to the FBI.

Instead, Warren assigned that task to Rankin, who lacked the detailed knowledge others had. "So Marina Oswald was not questioned as thoroughly as she should have been," David Belin insisted. "In part, this was because Earl Warren was a compassionate person and I believe somewhat naive when it came to Marina Oswald."

Marina Oswald, "a little spitfire" newly widowed with two small chil-

* More grisly still, the president's personal physician, Admiral George Burkley, took the metal box containing the brain of the late president from Bethesda. While Burkley said the family wished to have the brain interred with the body, various investigators concluded that the Kennedys feared it might somehow be displayed in a public exhibition.

dren, impressed Warren. "I was convinced she was telling the truth," he told Drew Pearson off the record.

The evening after Marina Oswald testified before the commission, Warren met briefly with reporters. In response to a question, he explained all of the evidence gathered would be turned over to the National Archives. Some of it "might not be published in your lifetime," he added in an unguarded aside.

When reporters pressed him, Warren sought to explain. "I am not referring to anything especially, but there may be some things that would involve security. These would be preserved but not made public."

Though he was referring to classified files from the FBI, the CIA, and the Department of State, Warren's bald statement provoked the first doubts about the commission's work. "I have never cussed myself so much for saying anything as I did that evening," Warren confessed to Drew Pearson. "I couldn't correct it. A denial never catches up."

The commissioners and the staff were aware of the possibility that Oswald might be the point man in an international conspiracy. On June 24, the deputy director of the Central Intelligence Agency, Richard Helms, privately informed Warren that the agency had custody of a defector who claimed to have knowledge of Oswald's activities in Russia. Yuri Nosenko, a former lieutenant colonel in the KGB, insisted that Oswald had acted without Soviet knowledge.

Nosenko, Helms continued, was not a reliable source. To base any part of the commission's report on him was to risk the credibility of the entire document.

Warren simply accepted Helms's explanation. The commission concurred. Rankin made the final decision not to interrogate Nosenko on the grounds that the commission staff lacked someone with the expertise to do what a cadre of CIA interrogators could not.

The irony was that the foreign conspiracy to kill a national leader had been formulated in the United States, by the Central Intelligence Agency, with Fidel Castro as its intended target. Prodded by Attorney General Robert Kennedy, the CIA had set in motion a number of schemes, one of which involved the use of organized crime figures, to assassinate the premier. *more plots Eisenhower admin. in motion before election*

While the CIA volunteered nothing of this, Warren apparently got wind of the plot. Near the end of the investigation, Warren wrote a letter to Robert F. Kennedy asking if he had "any additional information relating to the assassination" of the president. The carefully drafted letter asked specifically about information bearing on a conspiracy, foreign or domestic.

Kennedy returned a guarded reply. All information in the possession of the Department of Justice had already been turned over to the commission. His reply thus carefully excluded the CIA and FBI, which did have information, as Kennedy knew, about plots on the life of Fidel Castro.

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The attorney general in effect signed off on the commission's investigation, with the assertion that he had "no suggestions to make at this time regarding any additional investigation which should be undertaken by the Commission prior to the publication of its report." *

Self-imposed deadlines came and went. In the last two weeks of August and in September, some twenty men sat down to finish the commission report—including two of Warren's law clerks from the 1963 term who stayed on for a week to help check footnotes and two incoming clerks.

Everyone wrote, law clerk John Hart Ely recalled. Rankin and two assistants edited the incoming drafts.

After nine months of work, Warren, "relentless as a taskmaster," was tired, putting in fifteen- and sixteen-hour days. "It was taking ten pints of blood a day from him," Earl Junior said. "It was tearing him up; he was so emotionally involved."

The draft report written by the staff raised additional difficulties for the Chief. Gerald Ford and Richard Russell refused to approve the document.

Warren invoked his diplomatic skills. "It would have been disastrous if we hadn't been unanimous," he explained.

"Ford wanted to go off on a tangent following a communist plot," Warren explained to Drew Pearson. Castro was responsible, Ford insisted.

Ford also objected to the report's sharp criticism of the FBI for failing to report Oswald's presence in Dallas to the Secret Service. Warren tempered that language, but enough criticism remained in the report to leave Hoover "furious about it."

At Warren's request, Hale Boggs negotiated with Richard Russell, whose personal animosity to the chief justice barred an agreeable meeting. Like Ford, Russell balked at the draft report's conclusion that Oswald was not part of a conspiracy. The Georgian threatened to write a minority report on the grounds that there were "far too many unresolved questions for him to accept that as an incontrovertible fact . . ."

For the sake of unanimity, Warren personally drafted alternative language which left open a possibility that there might have been an as-yet-undiscovered conspiracy: "The Commission has found no evidence that either Lee Harvey Oswald or Jack Ruby was part of any conspiracy, domestic or foreign, to assassinate President Kennedy."

With these changes to accommodate Russell and Ford, the commission

* Members of the Warren family claim that the chief justice developed covert sources of information: a small group of FBI agents, concerned about the quality of the investigation and desiring the true story be told; Edward Bennett Williams, who had represented Mafia figures; and Warren Olney, who had accumulated extensive law enforcement contacts from his days as a deputy attorney general. "As far as Warren was concerned," asserted grandson Jeffrey Warren, the family's acknowledged expert on the Kennedy Commission, "the FBI was Inspector Clouseau," a reference to a bumbling detective in a popular film series. (Interviews with Jeff Warren, March 3, 1994 and Earl Warren, Jr., July 29, 1991.)

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was unanimous. "It was remarkable that the Commissioners all agreed on anything," Warren marveled later, perhaps with some pride. "Politically, we had as many opposites as the number of people would permit."

Essentially, the commission came to three conclusions:

First, Lee Harvey Oswald was a lone assassin. He had fired three shots from the sixth floor of the School Book Depository Building in Dallas, Texas, killing the president of the United States and wounding the governor of Texas.

Second, the commission found no evidence of a conspiracy to assassinate President Kennedy.

Third, the commission found no evidence that Oswald had assistance in planning or carrying out the assassination.

Beyond those basic conclusions, the commission dealt a mildly worded rebuke of both the Secret Service and the FBI. The Secret Service had not developed adequate criteria to define persons who might pose a threat to the president. Though the FBI had "considerable information" about Oswald, it "took an unduly restrictive view of its role in preventive intelligence work prior to the assassination."*

The commission delivered to President Lyndon Johnson its 888-page report on September 24, 1964, barely ten days before the beginning of the Supreme Court's October term. The immediate press reaction to the report was favorable, based in large part on the unquestioned reputations of the commissioners themselves, and on the apparent thoroughness of their investigation.

Spread over twenty-six supplemental volumes, the commission published the testimony, depositions, and statements of the 552 witnesses it had reviewed. These were supplemented with numerous photographs, sketches, maps, and illustrations.

The seventeen appendices to the report went so far as to include an analysis of Oswald's budget for the eighteen months prior to the assassination. Another took thirty pages to deal with rumors ranging from the source of the shots to the claim that the army burial party had practiced for the Kennedy funeral a week before the assassination.

The report was a best-seller. The Government Printing Office sold more than 140,000 copies of the one-volume report, and 1,500 copies of the supporting twenty-six volumes. Together, sales produced a profit of \$191,400. A mass-market paperback edition sold hundreds of thousands of additional copies.

Warren, said a former law clerk who discussed with the chief justice the commission's work, believed "they had done as good a job as they could

* Smarting from the report's criticism of the FBI, J. Edgar Hoover in December, 1964, ordered Warren's name deleted from the FBI's "Special Correspondents List," an index of favored friends of the agency or its director.

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have under the circumstances." Still, "he was frustrated by the pressure to wrap it up as fast as he could."

In a private conversation a year later, Warren conceded that the report "was probably done too quickly," but he affirmed his belief in the evidence pointing to Oswald's guilt. "There was great pressure on us to show, first, that President Johnson was not involved, and, second, that the Russians were not involved. These aspects were posed to us as the most important issues. And I do think our report conclusively proved these points."

It was a tired man who delivered the commission report to the White House on September 24. In the final weeks, the commission had met daily, for hours at a time, reviewing successive drafts, with Warren at each session.

"One can't say too much about the Chief's sacrifice," commission Assistant Counsel Howard P. Willens said. "The work was a drain on his physical well-being."

Warren's youngest son, Robert, judged it worse still. "That commission did more to age him than anything I've ever seen." (The report eventually completed, Warren and Bart Cavanaugh went off to attend two World Series games in New York with Secret Service agents in tow.)

Normally a man of great energy, this time Warren himself acknowledged the strain. "This has been a tough thing, living with this thing for ten months—along with my other work. Certainly I'm glad it is over."

If Warren thought the commission was behind him, he was wrong. The critics were just beginning.

The conspiracy-minded insisted on fixing blame, either on a communist plot somehow involving Fidel Castro, or on a rightist conspiracy funded by Texas oil millionaires. No whisper, no rumor, no coincidence was too outlandish to be woven into ever more elaborate scenarios.

Arrant speculation combined with procedural errors by the commission itself—the taking of Mrs. Kennedy's testimony in private, the refusal to release the autopsy photographs and X rays. Conjecture run amuck became conspiracy.

When Joe Ball telephoned Warren from California to ask what he might do in the face of growing skepticism, Warren coolly advised, "Nothing. We'll let history answer."

His position was simple. "The report is going to stand or fall on what's in it. We did an accurate job," he insisted.

Again, when David Belin asked the chief's advice about replying to critics, Warren advised against it. "Warren's position was the report spoke for itself," Belin explained.

Warren would reaffirm that view until his death. "I don't think there is much left to be desired from the report," he told an interviewer. "We reported every bit of evidence we took in the case. . . . We got everything we wanted. We achieved as much proof as could be achieved."

In 1966, the conspiracy theorists, still largely marginalized, received a

major boost with the publication by major New York publishing houses of two books critical of commission procedures and findings.

Edward J. Epstein's moderate-in-tone *Inquest* was based in part on sketchy interviews with five commissioners and twelve staff members. Written originally as a master's thesis at Cornell University, *Inquest* faulted the commission's work.

Epstein claimed the commission was inherently a political agency, faced with "the problem of trying to have an autonomous investigation, free from political interference." What he termed a part-time staff and commissioners detached from the day-to-day work hampered the investigation. Finally, he found fault with the evidence itself, particularly an FBI observer's account of the autopsy he believed negated the official report by doctors.

The second book, by former New York state assemblyman Mark Lane, was no more or less than the author's attempt to act, after the fact, as Lee Harvey Oswald's defense attorney. A commission "gadfly" or "journalistic scavenger," Lane promoted his *Rush to Judgment* with the fervor of the true believer.

Ultimately, Lane's critics found him willing to distort the evidence, to use material out of context, even to charge a conspiracy at the highest levels of government to frame his "client" for the murder of President Kennedy.

The two books disturbed Warren, said law clerk Kenneth Ziffren, less for their contents than for what the chief justice considered the "underhandedness" of the critics themselves.

Wesley Liebeler, the junior counsel assigned to investigate Lee Harvey Oswald's background, had provided copies of commission working papers and a chronological file to Epstein. "These were of particular importance in understanding the mechanics of the Commission," Epstein acknowledged in his book.

For the Chief, this was "the ultimate act of disloyalty," said Ziffren. At their last meeting, Warren had specifically reminded staff counsel that their relationship to the commission was similar to that of attorney and client.

He blamed Liebeler for Epstein's *Inquest* and scored Epstein for exaggerating both his access and his sources. (In his book, Epstein sometimes inflated brief conversations with staff members such as Joe Ball into "interviews.")

Of Mark Lane and his *Rush to Judgment*, Warren had only contempt. He deemed Lane no more than a publicity seeker who played "fast and loose with the subject."

Under fire, with no one to speak in its defense, the commission report fell into disfavor.

As presidential press secretary George Reedy put it, Lyndon Johnson hoped to use the report "to do something that was impossible. The public can't believe a lone assassin with a mail-order rifle was capable of killing the president of the United States, no matter how easy it is, in fact, to do and how easy was the shot for Oswald. . . . The sheer banality of it makes for disbelief."

By 1967, a Gallup Poll reported that six of every ten Americans doubted Oswald was the lone gunman at Dealey Plaza that day. Seven of ten concluded that there were still important unanswered questions about the assassination, a Harris Poll revealed.

Charges of a cover-up irritated Warren. "What possible set of circumstances could get Jerry Ford and me to conspire on *anything*?" he asked in exasperation.

That the chief justice would be party to a cover-up amused or angered the men who had served on the commission staff. Staff counsel David Belin, who would eventually become the most vigorous defender of the commission's work and its report, recalled Warren's charge to them. Truth was to be their only goal.

"I took him at his word," Belin said. "I think the other people who were the lawyers on the staff also took him at his word. And I don't know of any single lawyer on the staff who at any time tried to bend the truth for any preconceived notion."

In the end, the speculation of serpentine intrigues that reached even to the White House frustrated Warren.

"I have read everything that has come to my notice in the press and I read some of the documents that have criticized the Commission very severely, but I have never found that they have discovered any evidence of any kind that we didn't discover and use in determining the case as we did."

Just three months before his death, Warren still maintained the commission had left nothing uncovered, and no witness unheard. "There were no loose ends."

Nor was there resolution.